

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CIVIL REVISION APPLICATION No 1520 of 1996

For Approval and Signature:

Hon'ble MR.JUSTICE P.B.MAJMUDAR

- =====
1. Whether Reporters of Local Papers may be allowed : NO
to see the judgement?
 2. To be referred to the Reporter or not? : NO
 3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
 4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the Civil Judge? : NO

SUMARA KASAM @ BAABHA JUSAB

Versus

GHANCHI F ABDEMAN

Appearance:

MR YS MANKAD for Petitioner
MR CH VORA for Respondent No. 1, 2

CORAM : MR.JUSTICE P.B.MAJMUDAR

Date of decision: 11/08/2000

ORAL JUDGEMENT

The petitioner herein is the original plaintiff of Regular Civil Suit No.119 of 1990 pending in the Court of Civil Judge (J.D.), Mandvi, Kutch. The plaintiff has filed the said suit for injunction against the defendants, restraining them from opening the closed door

in the wall of the plaintiff. Along with the suit, application Exhibit 6 was filed, seeking an interim injunction, restraining the defendants from opening the door in the disputed property and further restraining him from removing partition abutting the suit premises. The interim injunction was prayed for at paragraph 5 of the said application. The trial court granted ad interim injunction as back as on 15.11.1990 and thereafter, after hearing the defendants, by the order dated 30.9.1991, confirmed the said injunction by allowing the application Exhibit 6.

The aforesaid order of the trial court below Exhibit 6 in the said suit was challenged by the original defendant by filing appeal, being Civil Miscellaneous Appeal No.129 of 1991. The learned appellate Judge ultimately allowed the said appeal, which was filed by the original defendants and set aside the order passed by the trial court below Exhibit 6 in the aforesaid suit.

The aforesaid order of the appellate court has been challenged in the present revision application by the original plaintiff.

This Court (Coram : M.H. Kadri, J.), while admitting the revision application, granted interim relief on 25.9.1996, which was to the effect that the order of the trial court below Exhibit 6 should be restored during the pendency of this revision application. The effect of the same is that till today, the injunction order granted by the trial court at the initial stage is still continuing and the position of 1990, i.e. on the date of filing of the suit, is prevailing even as on today.

I have heard both the Advocates in the revision application. I am of the opinion that since the injunction is in force since 1990 and about 10 years have already passed, it would be in the fitness of things that the said interim relief which was granted by this Court at the time of admitting the C.R.A. should be continued, with a direction to the trial court to dispose of the main suit at the earliest. In the aforesaid peculiar facts and circumstances of the case, therefore, I direct that the interim relief granted by the trial court below Exhibit 6 in Regular Civil Suit No.119 of 1990 should be continued during the pendency of the said suit and since the suit is of 1990, the learned Civil Judge (J.D.), Mandvi, Kutch, is directed to dispose of the same, latest by 31st December, 2000. In fact, this suit of 1990 was required to be disposed of by the trial court and

pendency of the revision in the High Court should not mean that the substantive suit should not be proceeded on merits. In any case, if the said suit is not disposed of by this time, it must be decided by the aforesaid date. It is clarified that whatever observations have been made by the trial court at the time of deciding Exhibit 6 or by the appellate court while deciding Civil Miscellaneous Appeal should not be taken into consideration by the learned trial Judge while deciding the suit. Even the interim order granted by this Court should not be taken into consideration one way or the other and that the suit should be decided strictly as per the evidence which may be adduced by the parties on record and as per the provisions of law. It is also further clarified that in case the suit is dismissed and if there is an appeal filed under Section 96 of CPC and if there is an occasion to decide interim application in the appeal, that application also may be decided only as per the evidence which might have been adduced by the parties in the suit and interim order passed by this Court at interim stage of the suit or even by the trial court should not be taken into account while deciding such application.

With this clarification, this Revision Application is disposed of and the interim relief granted by this Court, i.e. injunction granted by the trial court below Exhibit 6 in Regular Civil Suit No.119 of 1990, to continue till the disposal of the suit and the suit is to be disposed of, as stated above, on or before 31st December, 2000.

Writ of this Court should be sent immediately to the Civil Judge (J.D.), Mandvi, Kutch for further compliance.

Revision application is disposed of with no order as to costs.

(P.B. Majmudar, J.)

(apj)